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10 *Attorneys for Plaintiff*
11 **LAURI VALJAKKA**

12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
14 **OAKLAND DIVISION**

15 **LAURI VALJAKKA,**

16 Plaintiff,

17 v.

18 **NETFLIX, INC.,**

19 Defendant.
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Case No. 3:22-cv-01490-JST

**PLAINTIFF LAURI VALJAKKA'S
ADMINISTRATIVE MOTION TO FILE
DOCUMENTS UNDER SEAL**

I. INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5, Plaintiff Lauri Valjakka (“Valjakka hereby submits this administrative request for a narrowly-tailored Order authorizing the sealing of certain materials filed in connection with. Valjakka’s *Daubert* Motion to Exclude Testimony of Netflix’s Designated Expert “Valjakka’s Motion”).

Valjakka submits this Motion and the Declaration of William P. Ramey, III (“Ramey Declaration”) to protect the confidentiality of the information contained in five (5) exhibits, A-E to the Ramey Declaration (“Exhibits”).

The Exhibits contain, discuss, or otherwise include information that Netflix or Valjakka has designated “Highly Confidential – Attorneys’ Eyes Only” pursuant to the Stipulated Protective Order Regarding the Disclosure and Use of Discovery Materials (Dkt. No. 56) (“Protective Order”) (*see Ramey Declaration* filed herewith supporting Valjakka’s claim of confidentiality). This information constitutes Protected Material as defined at § 5.2 of the Protective Order.

Specifically, Valjakka seeks to seal:

Document	Portions to Considered to be Sealed	Designating Party	Basis for Request to File Under Seal
Ex. A to Ramey Declaration	Entirety	Valjakka	Exhibit A is a highly-confidential expert report by Valjakka’s damages expert This document was designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” by counsel for Valjakka pursuant to the parties’ Stipulated Protective Order and is thus being filed under seal. Valjakka respectfully requests that Exhibit A be redacted in its entirety.
Ex. B to Ramey Declaration	Entirety	Valjakka	Exhibit B is a highly-confidential expert report by Valjakka’s damages expert

Document	Portions to Considered to be Sealed	Designating Party	Basis for Request to File Under Seal
			<p>This document was designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” by counsel for Valjakka pursuant to the parties’ Stipulated Protective Order and is thus being filed under seal.</p> <p>Valjakka respectfully requests that Exhibit B be redacted in its entirety.</p>
Ex. C to Ramey Declaration	Entirety	Netflix	<p>Exhibit C is a highly-confidential expert report by Netflix’s damages expert</p> <p>This document was designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” by counsel for Netflix pursuant to the parties’ Stipulated Protective Order and is thus being filed under seal.</p> <p>Valjakka respectfully requests that Exhibit C be redacted in its entirety.</p>
Ex. D to Ramey Declaration (Excerpts from Plaintiff Lauri Valjakka’s Responses and Objections to Defendant Netflix’s First Set of Interrogatories (No. 1-20))	Highlighted portions containing confidential business information regarding Valjakka’s business practices, and how he finances litigation matters	Valjakka	<p>The highlighted portions of Exhibit D contain material that is confidential or highly confidential information including the names of business information of Valjakka.</p> <p>This document was designated “CONFIDENTIAL” by counsel for Valjakka pursuant to the parties’ Stipulated Protective Order and is thus being filed under seal.</p> <p>Valjakka respectfully requests that the highlighted portions of Exhibit D be redacted</p>
Ex. E to Ramey Declaration (Excerpts from Plaintiff Lauri Valjakka’s	Highlighted portions containing party names to settlement and licensing agreements and any	Valjakka	<p>The highlighted portions of Exhibit D contain material that is confidential or highly confidential information including the names of business information of Valjakka.</p> <p>This document was designated “CONFIDENTIAL” by counsel for Valjakka pursuant to the parties’</p>

Document	Portions to Considered to be Sealed	Designating Party	Basis for Request to File Under Seal
Supplemental Responses and Objections to Defendant Netflix's First Set of Interrogatories (No. 1-20))	confidential terms		Stipulated Protective Order and is thus being filed under seal. Valjakka respectfully requests that the highlighted portions of Exhibit E be redacted

This motion is supported by the Ramey Declaration and is being concurrently filed with a Proposed Order pursuant to this Court's Standing Order Governing Administrative Motions to File Material Under Seal.

II. RELEVANT LEGAL STANDARDS

To determine whether to allow documents to be filed under seal under Ninth Circuit law, two different tests apply depending on circumstances. The "compelling reason" test applies to documents attached to dispositive motions or documents, *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178–80 (9th Cir. 2006), or where the motion is "more than tangentially related to the underlying cause of action," *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1099 (9th Cir. 2016). The less-restrictive "good cause" test applies to documents attached to other non-dispositive motions. *Kamakana*, 447 F.3d at 1178–80. To seal records filed in connection with dispositive motions, the Ninth Circuit requires a party to "articulate[] compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure..." *Kamakana*, 447 F.3d 1172 at 1178-79 (citations omitted). Such "compelling reasons" generally "exist when such 'court files might have become a vehicle for improper purposes,' such as the use of records to gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets." *Id.* at 1179 (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978)). Under the "good cause" standard of Rule 26(c), the Court has "broad latitude" "to prevent disclosure of materials for many types of information,

1 including, but not limited to, trade secrets or other confidential research, development, or
2 commercial information.” *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002)
3 (emphasis in original).

4 Although Daubert motions are “nominally non-dispositive,” the Ninth Circuit has applied
5 the stricter “compelling reasons” standard to sealing Daubert motions filed in connection with
6 pending summary judgment motions. *Apple Inc. v. Samsung Elecs. Co.*, 727 F.3d 1214, 1222
7 (Fed. Cir. 2013) (citing *In re Midland Nat’l Life Ins. Co. Annuity Sales Practices Litig.*, 686 F.3d
8 1115, 1119 (9th Cir. 2012)). See also *Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*,
9 No. 12-CV-03844-JST, 2015 WL 984121, at *3 (N.D. Cal. Mar. 4, 2015) (discussing *In re*
10 *Midland*). At least one court in this District has further extended the “compelling reasons”
11 standard to a Daubert motion that “relate[d] to the resolution of the case” and “could have
12 critically affected the outcome of the case.” *Fujitsu Ltd. v. Belkin Int’l, Inc.*, No. 10-CV-
13 03972LHK, 2012 WL 6019754, at *5 (N.D. Cal. Dec. 3, 2012). For purposes of this motion,
14 Valjakka assumes that the “compelling reasons” standard will apply.

15 A “trade secret” that is protectable from public disclosure “may consist of any formula,
16 pattern, device or compilation of information which is used in one’s business, and which gives
17 him an opportunity to obtain an advantage over competitors who do not know or use it.” *In re*
18 *Electronic Arts*, 298 Fed. App’x 568, 569–70 (9th Cir. 2008) (quoting Restatement of Torts § 757,
19 cmt. b). Additionally, “compelling reasons” may exist if sealing is required to prevent judicial
20 documents from being used “as sources of business information that might harm a litigant’s
21 competitive standing.” *Id.* at 569 (quoting *Nixon*, 435 U.S. 589 at 598).

22 Potential injury may result from the disclosure of confidential and proprietary business
23 information, in that competitors could use such information to duplicate [plaintiffs] products,
24 compete for [their] customers, or interfere with [their] business plan and thereby gain a
25 competitive advantage in the marketplace. *Intel Corp. v. Via Techs., Inc.*, 198 F.R.D. 525, 531
26 (N.D. Cal. 2000). The Court may therefore order the sealing of court records when they contain
27 confidential or otherwise sensitive business information. Civil L.R. 79-5; see, e.g., *IMAX Corp. v.*
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1 *Cinema Techs., Inc.*, 152 F.3d 1161, 1168 & n.9 (9th Cir. 1998) (noting confidential and
2 proprietary business information was filed under seal).

3 Valjakka recognizes the importance of public access to court documents and has
4 endeavored to identify as confidential only a limited amount of non-public financial, licensing or
5 business information, and similar highly confidential details, and expert reports, which have been
6 designated by Netflix or Valjakka as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
7 ONLY” to reflect the sensitive nature of the documents, pursuant to the Stipulated Protective
8 Order in this case (ECF 56).

9 **III. THE COURT SHOULD GRANT VALJAKKA’S REQUEST AS TO THE EXHIBITS** 10 **OR PORTIONS OF ITS EXHIBITS**

11 As set forth in the contemporaneously-filed Ramey Declaration, Valjakka has established
12 that “the document or portions thereof, are privileged, protectable as a trade secret or otherwise
13 entitled to protection under the law.” Civil L. R. 79-5(b). In addition, the sealing request is
14 “narrowly tailored to seek sealing only of sealable material.” *Id.*

15 Valjakka’s basis for sealing Exhibits A- E to the Ramey Declaration is that they contain
16 confidential licensing information, and the expert reports of the parties, which has been designated
17 by the respective parties as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to reflect
18 the sensitive nature of the documents, pursuant to the Stipulated Protective Order in this case (ECF
19 56).

20 **IV. STATEMENT OF COMPLIANCE**

21 Valjakka has reviewed and complied with the Standing Order Governing Administrative
22 Motions to File Materials Under Seal Before District Judge Jon S. Tigar. Defendant has also
23 reviewed and complied with Civil Local Rule 79-5, including the requirement to file separate
24 motions if a party seeks to file under seal a document containing “portions that more than one
25 party bears the burden of showing is sealable.”

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2 Dated: September 21, 2023

Respectfully submitted,

3 RAMEY LLP

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